NOTES OF CASES.

Attorney and Client—Representing Conflicting Interests—Eiseman v. Hazard, N. Y. Ct. of App., 112 N. E. 722.—In the principal case the court said: "It is not always improper or unlawful for an attorney at law to represent conflicting interests. Adverse interests, if they are to be adjusted, may be represented by the same counsel, though the cases in which this can be done are exceptional, and never entirely free from danger of conflicting duties. Lawall *v.* Groman, 180 Pa. 532, 37 Atl. 98, 57 Am. St. Rep. 662; Jones *v.* Howard, 99 Ga. 451, 27 S. E. 765, 59 Am. St. Rep. 231; Jones *v.* Lamont, 118 Cal. 499, 50 Pac. 766, 62 Am. St. Rep. 251; Shaw *v.* Bill, 95 U. S. 10, 24 L. Ed. 333.

[2] But let us see what the plaintiff in this case undertook to do. The contract between him and the defendant was that he should straighten out the affairs of E. C. Hazard & Co. and get control of the firm for the defendant. It was contemplated that this should be done by an involuntary proceeding in bankruptcy, and a settlement with the creditors. Pursuant to that arrangement, the plaintiff induced William Lanahan & Son to institute the bankruptcy proceeding, and he afterwards met with the creditors and brought about the composition agreement. That was precisely what the plaintiff was employed to do, and the defendant knew of the different steps he took in her behalf, and she approved the same. It was all incident to his original retainer.

If the plaintiff's conduct in this case is to be condemned, it is not because he was untrue to his client and represented both her and those opposed to her in the same transaction. It must be that it was unlawful for him to accept such a retainer as he did accept, but I cannot see that it was unlawful. There may be some criticism of the plaintiff's conduct in coercing the bankrupts into giving the defendant a controlling interest in the corporations formed to carry on the business of the defunct firm, but that was within the terms of his employment. The defendant can find no fault therewith. The only persons who might find fault are the bankrupts who were so coerced, but they have entered no complaint. The rule of law laid down in the opinion of the Appellate Division, and the cases therein cited, as to the responsibilities of an attorney at law to his client, are wholesome regulations, but they have no application to this case."

Automobiles—Loans—Car and Driver—Invited Guest—Kennedy v. R. & L. Co., 112 N. E. 872.—In the principal case it was held that where an automobile owner loaned his car and driver for a particular purpose to others who invited plaintiff to ride with them, the plaintiff was a mere licensee to whom the owner was not liable for negligence, but only for wanton and reckless acts. The court said:

"The plaintiff's due care is conceded, and if, without deciding, it is assumed the jury further could find that the car had been dispatched by a duly authorized agent of the company, that the unlicensed driver while operating the automobile was its servant, and that the plaintiff's injuries were caused by his negligence, the plaintiff cannot recover unless the defendant had undertaken the duty of providing her with transportation, or, as averred in the declaration, that 'she was lawfully traveling' in its car. The company, although engaged in the sale of automobiles, did not let them for hire, and there seems to have been no substantial dispute, or the jury, upon the aspect of the evidence most favorable to the plaintiff, could have found that one Martin, the 'advertising manager' of a company publishing a paper in which the defendant advertised, had been requested by an employee. Edna *v.* Gilmore, to 'obtain an automobile and driver for her to take her mother out to Medford for a certain purpose,' and in response to this request Martin telephoned to the office of the defendant company and requested that a touring car for her use be sent to the street and number of Miss Gilmore's house. The defendant for the sole purpose of accommodating Martin thereupon sent the car to the house, and after Miss Gilmore and her mother got in they drove, by Miss Gilmore's direction, to the plaintiff's residence, where, upon her invitation then or previously given, the plaintiff, a fellow employee at the publishing company's office, joined them, when they proceeded to Medford. It was on the return trip that the collision occurred.

The burden of proof rested on the plaintiff to show that under the circumstances through which she had become an occupant of the car the defendant undertook to exercise reasonable care to protect her from injury during the journey. If the car and driver were lent to Martin for his own use or the use of his friends the plaintiff cannot recover. The defendant had no interest in the purposes or undertaking for which Martin had requested and obtained the loan of the car. It only permitted him to use the car for his own accommodation. (Herlihy *v.* Smith, 116 Mass. 265, 266). The evidence fails to show any contract for hire or in payment of any services of Martin in the past or to be rendered in the future.

But even if his request was complied with in order to retain his good will, or in recognition of past favors from him personally, or in the hope of future favors from the publishing company, or in expectation that if his friends desired to purchase a car he would recommend the defendant's automobiles, the service which the defendant undertook was to transport the persons named within the limits already described. It is settled that the extent to which property which is the subject of the bailment can be used by the bailee must be determined by the contract (Perham *v.* Coney, 117 Mass. 102; United Shoe Mach. Co. *v.* Holt, 185 Mass. 97, 69 N. E. 1056; Cartlidge *v.* Sloan, 124 Ala. 596, 602, 26 South. 918; De Voin *v.* Mich.

Lumber Co., 64 Wis. 616, 25 N. W. 552, 54 Am. Rep. 649; Felton *v.* Deall, 22 Vt. 170, 54 Am. Dec. 61; Bryant *v.* Wardel, 2 Exch. 479). The car was furnished for the use of a particular person for a particular service, and while its full use and enjoyment for that purpose was implied, the defendant did not contract for or assent to its use by the plaintiff, who at most was only a licensee to whom it owed no duty except to refrain from wanton and reckless acts on the part of its servant in driving the car, which are not charged in the declaration or shown by the evidence (Freeman *v.* United Fruit Co., 223 Mass. 300, 111 N. E. 789; Walker *v.* Fuller, 223 Mass. —, 112 N. E. 230; McColligan *v.* Penn. R. R., 214 Pa. 229, 63 Atl. 792, 6 L. R. A., N. S., 544, 112 Am. St. Rep. 739; Felton *v.* Deall, 22 Vt. 170, 54 Am. Dec. 61; Smith *v.* Bailey, 1891, 2 Q. B. 403, 3 R. C. L. Bailments, sec. 32). The request for instructions to the jury that 'upon all the evidence the jury must find for the defendant' and 'that there is no evidence for your consideration of negligence on the part of the defendant, the R. & L. Company' should have been given."

Bills, Notes and Checks—Promissory Note—Statement of Transaction Giving Rise to Instrument—First Nat. Bank v. Barrett (Mont.), 157 Pac. 951.—In the principal case the following instrument was held to be a negotiable promissory note:

"Stockholders' Purchasing Contract.

Nov. 15th, 1910.

After a good and satisfactory examination of the Percheron stallion named Bobino No. 33674, owned by C. W. Green, of Miles City, Mont., and recognizing his value as a means of improving our horse stock, we, the undersigned subscribers, hereby purchase said stallion of C. W. Green accordingly, and we hereby authorize the delivery of said horse to any one of the subscribers hereto.

$3,600.00.

Miles City, Mont.
Nov. 15th, 1910.

For value received I promise to pay to the order of C. W. Green the sum of thirty-six hundred dollars, payable at the First National Bank of Miles City, Montana, in payments as follows:

Thirty-Six Hundred Dollars, Nov. 15th, 1911.
..... 191—.
..... 191—.

with interest from date at the rate of 8 per cent, payable semi-annually, and if not so paid, the whole sum of both principal and interest to become due and collectible at the option of the holder hereof, and in case suit or action is instituted to collect payment I agree to pay reasonable attorney fees. M. Barrett, James F. Blair,